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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	**CC Docket No. 94-1**
Price Cap Performance Review	)	
for Local Exchange Carriers	)	

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COMMENTS OF
INTERNATIONAL COMMUNICATIONS ASSOCIATION

Introduction and Summary

The International Communications Association (ICA) hereby submits its initial comments concerning the Fourth Further Notice of Proposed Rulemaking (FCC 95-406, released September 27, 1995, hereafter "FFN") in the matter captioned above. The FFN contains the Commission's laundry list of issues concerning possible changes to the core of the price cap plan for local exchange carriers (LECs). The core of the plan is the overall price constraint on LECs' interstate access services, as defined by the Price Cap Index (PCI).

The FFN seeks comments on a number of issue areas including whether it is feasible to develop a true total factor productivity (TFP) adjustment for the price cap, or whether the methods based upon prices, earnings and LEC accounting data currently used in order to calculate the LECs' X-factor are generally appropriate. The FFN also delves into a number of other possible changes in the LECs' overall price cap constraint, including whether to calculate moving average versus fixed X-factors; earnings sharing requirements and alternatives to such backstops; the current common line formula; future treatment of exogenous cost adjustments to the PCIs; and the frequency of future performance reviews.

The price constraining features of the current LEC plan are virtually the only part of what has become a complex regulatory system that could actually benefit consumers of interstate LEC services. The LECs are the clear beneficiaries of several other aspects of the current plan, including its pricing flexibility provisions, its reduced reliance on service cost studies, and the relatively minimal reporting burdens on these monopoly providers. The overall price constraint represented by the X-factor and other parts of the PCI is virtually the only feature of the plan that protects consumers rather than benefiting the dominant incumbent LECs. Accordingly, ICA believes the Commission should be extremely cautious about adopting changes to the overall price constraint that would disadvantage consumers of the services covered by the interstate price cap plan.

At this point in time, the Commission should not embark on making major structural changes in the existing price cap constraint. The FFN itself shows that implementing a constraint using a formal total factor productivity (TFP) method would be complicated and would be unlikely to improve X-factor calculations using publicly available financial information, including LEC earnings as a continuing form of "backstop." ICA believes that LECs should continue to have the flexibility to choose between at least two X-factors, because of the inevitable variations in different LECs' cost and demand changes. Such choices should be binding over a longer period than just one year; three years is preferable to reflect a reasonable LEC planning horizon and biennial elections represent the minimum period.

Earnings and other financial information are everyday measurement tools in competitive markets, whereas productivity and X-factors are not. Therefore, ICA believes that the price cap plan should continue to use reported LEC earnings as a check on performance of the plan. LECs electing less than the highest X-factor established in this proceeding should have to share earnings over a threshold based upon the rate of return upon which price cap rates were initially set, adjusted for changes in the Treasury bond yield outside a defined zone of flexibility. Exogenous costs should be minimized to regulatory-determined factors that affect a LECs' cash flow, including any annual earnings sharing adjustment.

Because the overall price constraint mechanism is the primary feature in the plan that potentially benefits consumers, the Commission should require that regulated carriers purchasing LEC access services demonstrate that they will flow through all price reductions attributable to the price constraint on a strictly pro rata dollar-for-dollar basis.

ICA fails to see how adopting a moving average calculation of the X-factor would improve the incentive features of the price cap plan or reduce the temptations for dominant incumbent LECs to try to game the system. Moving averages should not be adopted. Instead, the Commission should devote more of its scare resources to promoting competition with the price cap LECs and use any resulting effective competition to reduce regulation of the incumbents in periodic reviews of the price cap plan.

ICA's interests in this proceeding

The ICA is the largest association of telecommunications users in the world. Estimates indicate that ICA members spend over $20-billion each year on telecommunications services and equipment. A substantial amount of that money is paid directly or indirectly to LECs for services subject to the interstate price cap plan. ICA members are large users of each and every type of existing or potential service offered by the local telephone carriers subject to the this proceeding. The bylaws of the ICA exclude any firm that is predominantly engaged in the production, sale or rental of communications services or equipment from eligibility for membership.

Real expenditures by ICA members on public telecommunications services are declining today due to international trends in reduced costs for long distance and other services. While services by U.S. LECs have exhibited some price decreases, most ICA members question whether current regulatory constraints on these prices, including the Commission's price cap plan, are as effective as they should be. Many individual ICA members lack the time to study regulatory policy issues in depth, yet even these members frequently note to ICA's leadership that the LECs' telecommunications services prices do not decline at any rate that even remotely approaches the cost reductions the members are experiencing with respect to other forms of information technology services.

Computers and data network equipment prices are declining much faster than LEC rates despite the fact that the technologies used to provide all type of information and communications services are broadly becoming nearly identical. The same types of technologies are found in these other highly competitive markets, and the markets for regulated telecommunications services. Yet, prices for the latter services would apparently not decline at all in the aggregate but for regulatory rules like the interstate price cap constraint.

It is true that there may be differences between the total cost structure for telecommunications services and costs for some of these other information technologies. Common carrier services have traditionally been more labor intensive than some computer technologies. Nevertheless, the LECs have made large reductions in employment over the last few years, with few if any notable effects on reducing their prices. On the other hand, the price cap LECs are among the most aggressive telecommunications operators in the world in terms of their diversified investments in foreign telecommunications ventures, video and other new media products. Much of their financing of these efforts is internal. This money must be coming from somewhere.

The Commission's proposals in the FFN could seriously undermine any effective overall constraint on LEC prices in at least two ways, unless the Commission is quite careful.

First, the Commission could adopt changes in the price mechanism that it would later find difficult to administer, given its limited current resources and the likely real diminution of those resources in the future under federal budget limitations. The price cap plan will become more difficult for the Commission to administer to the extent the price cap depends upon specialized, non-public information; or relies upon economic calculations that cannot be compared to economic data for the larger U.S. economy.

The plan could also become more difficult to administer if it requires the Commission to expend resources that would be better devoted to further development of competition in all telecommunications markets -- true, effective competition that is earnestly desired by almost all policy makers and consumers alike.

Second, the Commission could understate the correct size of the annual price constraint on the LECs. ICA has participated in most of the many phases and notices by which the Commission has attempted to craft a balanced price cap mechanism since 1987, and believes this type of understatement has occurred and continues to occur.

In the First Report and Order, the Commission established a higher X-factor of 5.3% for LECs that elected to forego earnings sharing. There was substantial evidence in the first phase of the proceeding indicating that even this X-factor value was too generous. The majority of price cap regulated carriers not only elected the 5.3% X-factor, but also obtained waivers to apply it retroactive from August 1, 1995 in order to further reduce any possible earnings sharing with consumers. [See FFN, paras. 7-8].

ICA believes that the 5.3% X-factor may be too low by 50% to 80% or more and will therefore carefully scrutinize data submitted by other parties concerning the appropriate X-factor values.

It is now more than clear that the Commission underestimated the effects of new technologies on telecommunications services when first implemented price caps for LECs in 1991. In the initial price cap proceeding (Docket 87-313), ICA, as well as many other users of LECs' monopoly access services, argued that the telephone carriers studies of productivity did not adequately account for the effects of new technologies. Business users of telecommunications and information services had a very sound basis for this view, because they knew the effects that these same technologies were having on the costs and productivity of their own operations. In addition, the telephone industry data used in that proceeding had a major problem; the first year of the AT&T divestiture, 1984, produced a "productivity" change value that was very different from the subsequent years. The Commission nevertheless decided to include the 1984 data point and rejected the arguments that telecommunications technology costs were declining faster than they had during most of the LECs' history:

> [A]though we fully recognize, and are impressed by, the efficiencies resulting from advances in telecommunications technology in recent years, no commenter has provided empirical evidence that such advances are having or will have a sudden, revolutionary impact on the total factor productivity of the telephone industry as a whole.....[1]
>
> [W]e tentatively conclude [that there is]...no basis for selecting a productivity number that differs from the long term historical number of 2.5 percent relative to the economy as a whole.

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1 Policy and Rules Concerning Rates for Dominant Carriers," CC Docket No. 87-313, Second Further Notice of Proposed Rulemaking, released April 17, 1989 at paragraphs 696-697.

The Commission did reverse its course in the first phase of this proceeding, and acknowledged that it never should have used the 1984 productivity data for the industry, and that its prior determination that technology cost trends would not differ from historical averages was wrong.

> The Commission developed a factor of 2.8% based on the average of the result of the two studies, characterizing this choice as a "conservative minimum figure." A 0.5 percent [consumer productivity dividend] was added so that the total productivity offset was 3.3 percent....
>
> Evidence now in the record indicates that the hurdle was not as challenging as the Commission anticipated....[2]
>
> [T]he earnings achieved by LECs under price caps suggest that the productivity offset may have been too low....it is significant that LEC earnings have increased each year under price caps.[3]

At this juncture, it remains far from clear that the current price constraints and X-factors adequately reflect some LECs' high ongoing ability to reduce real prices. ICA recognizes that not all LECs are likely to share in this expectation; however, most of the LECs have revealed preferences indicating their internal assessment that the value of their additional, unshared profits will exceed the nominal reduction in earnings associated with adopting the highest X-factor.

Changes in the operation of the current price cap constraint

Total factor productivity

No less than 14 subissues are designated in the FFN concerning whether the Commission should change in the manner of calculating the interstate X-factor by adopting a "total factor productivity" approach. Many of these specific issues deal with the "Christensen study" developed and supported by the price cap LECs. The Christensen study itself as well as several of its underlying assumptions and data sources, late changes in the study submitted by LECs and its use of inconsistent data sources and time periods for input and output productivity calculations created substantial controversy in the first phase of this proceeding.

Most of the subissues identified by the Commission fundamentally require the LECs to revisit and attempt to justify many of the complicated features of their submission in the first phase of the proceeding. Hopefully, the cycle in which the Commission offers dominant LECs repeated

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2 Price Cap Performance Review for Local Exchange Carriers, CC Docket 94-1, First Report and Order, April 7, 1995, at paragraph 205.

3 Id., paras. 201-204.

opportunities to argue and reargue their positions in formal pleadings, numerous ex parte submissions and countless face to face meetings will someday come to an end.

In the meantime, ICA, like most other parties, cannot at this time fully evaluate these issues because it is not privy to the underlying development of the Christensen study. ICA will reserve further comment on most of these issues until it reviews the LECs' submissions. In addition, the LECs, as profit-maximizing firms, continue to have clear and normal incentives to attempt to persuade the Commission to adopt the loosest possible overall price constraint. Therefore, ICA will also closely scrutinize the X-factor estimates submitted by other parties who are more attuned to consumer interests and competitive market forces.

Some aspects of the issues relating to TFP calculations do deserve a broader comment at this time. As noted, ICA has participated actively in the first phase of this proceeding and in CC Docket No. 87-313, and is very familiar with the developments and information available to the Commission from those proceedings. Nevertheless, ICA believes that even a casual reader of the FFN, without familiarity with the history of the Commission's price cap efforts, would surely be struck by the complexity of the issues that must be resolved if such a formal TFP approach were to used as part of the primary price cap constraint on LEC's interstate access services.

In designating as many issues as it did regarding how to develop an accurate TFP price constraint, the Commission highlighted these facts about a formal TFP methodology and its robustness as a significant public policy tool:

1. Aspects of formal TFP calculation methods remain under continuing academic and theoretical review. Apparently no fixed theoretical consensus yet exists about many of these methodological issues. The number of practitioners in the economics of total factor productivity remain quite limited, both in academic and industry circles. The LECs' expert, Christensen, is one of the best known proponents of productivity research, but it is not clear that his or other theoreticians' methodologies are widely used to support actual business decisions in competitive markets.

2. Even preliminary measures of telecommunications industry productivity have not yet been developed by the objective government agencies such as the U.S. Bureau of Labor Statistics after several years of research. When preliminary measures are available they may be subject to further years of refinement, and may still require comparisons to broader telecommunications or information industry productivity data. Such broader comparisons will be needed in order to avoid circularity. That is, if the BLS collects most of its telecommunications productivity data from entities that know it may be used by the Commission to set price constraints on them, the data may require independent verification and comparison from other sources.

3. Developing any TFP calculation requires a number of specialized economic data sets. Some of these data may not now be available from public sources, and even where the

data can be obtained publicly, different sources of data may result in non-uniform or inconsistent results. Some Commission designated issues relate to data required for merely to estimate output productivity in the TFP calculations. Each of these data could all be drawn from disparate sources, or, as the FFN itself recognizes, from different data sources for any single item. In addition, the TFP calculation requires the specification of comparable data on input price changes and the corresponding on TFP.

4. In addition to the data inherently required to perform any TFP calculation, the FFN also identifies at least four other subissues that must be resolved before a TFP calculation could be applied to regulate LEC interstate rates, due to the embedded features of U.S. and federal telecommunications regulation that are outside the scope of an overall interstate services price constraint. These issues include jurisdictional separations, cost allocations between regulated and non regulated services, and the existence of various transfer payment mechanisms requiring contributions from or subsidies to certain telecommunications, which may exist in different forms in state jurisdictions as well as the interstate jurisdiction.

All of these features of a formal TFP methodology suggest that it will be data- and resource-intensive for the Commission to administer, as well as being the subject of continuing controversies. Fundamentally, the Commission should question whether these efforts would produce a better overall price constraint for interstate LECs than would simplify refinements in the methods used to date to establish X-factors.

Part of the answer to this question depends upon whether the price cap type of ceiling constraint, incorporating an X-factor, is unambiguously better than other regulatory tools in all circumstances. If "pure" price caps were inherently better than other forms of price constraints, the complexity and specialized data needed to apply a formal TFP adjustment might be justified. Clearly, however, price caps are not "better" than earnings regulation per se, particularly the very limited use of earnings-related backstop checks that apply to the LECs' interstate services under the existing plan. A mis-specified aggregate price constraint under a price cap system has no less adverse effects on LECs or on aggregate economic efficiency than a mis-specified earnings constraint under classical regulation.

For example, a price cap which is too low to reflect changes in the economic costs of providing interstate services has the same effects as a rate of return set far above the utility's actual cost of capital (and vice versa). These errors would influence prices and investment the same way: Excessive prices lead to economically inefficient under-consumption of telecommunications outputs and inefficiently high investments. Under rate base regulation over investment in regulated assets may occur. Under mis-specified price caps, excess investments may occur, without the discipline of separate, external financing by the LECs, in adjacent product or foreign markets.

ICA does not expect the Commission to abandon price caps for interstate services and return to traditional rate base/rate of return regulation for the major LECs. The issue is whether the current plan strikes a proper balance between calculating the X-factor and the reliance on earnings as a backstop ICA thinks it does. The X-factor calculation relies on available price and accounting information, as does the earnings backstop.

In fact, it is striking to compare the current combined regime, involving observed historical data and basic earnings information used to formulate the current LEC price constraint mechanism, with the aspects of the TFP methodology that we reviewed above:

1. Measurement systems for financial performance are based in widely used models such as the capital asset pricing model, discounted cash flow and internal rate of return calculations. The economics of these tools long ago moved out of the academy and onto Wall Street and Main Street. There are many practitioners of these financial measurement systems, and their work is universally used to support actual business decisions. ICA has not identified any of its member companies who have even considered replacing earnings analysis and other financial tools with total factor productivity studies.

2. There is no need for government agencies to use tax dollars to try to develop better financial models and data, which are widely available from literally thousands of private sector firms ranging from Standard & Poor's or Dow Jones to small investment consulting houses. In light of the Commission's budget problems, this point is even more relevant.

3. The breadth of private sector support for earnings and financial data means that there is no need to construct esoteric new data series or risk using inconsistent calculations, as there is with a formal TFP method. Specialized government-sponsored data collection is not required.

4. All of the embedded regulatory requirements that would have to be reconciled with formal TFP calculations as the regulatory requirements changed are more or less "automatically" picked in X-factor calculations that include earnings and other financial information. If the Commission makes a significant change to its Part 64 cost allocation rules, for example, the effects will appear in other ARMIS and earnings data and be reflected in periodic reviews of the X-factor. It is unclear, at best, how such changes would impact TFP calculation methods.

ICA expects the Commission to make a number of changes in LEC regulation if, and when the LECs become subject to effective competition. Changes like conforming LEC accounting more closely to generally accepted accounting practices, streamlining capital recovery requirements already are underway and will continue. How such changes will affect LECs' financial and earnings results is easy to estimate; how the same changes would impact recalculation of TFP models, is not.

The Commission notes that a TFP methodology might provide certain improvements over the current ways of calculating the X-factor. [FFN, paragraph 61.] In view of the stark limitations identified by ICA above, compared to a price constraint that continues to rely upon standardized financial and accounting data, ICA believes that any such advantages of the TFP methodology are not adequate to warrant its adoption by the Commission. The types of TFP calculations discussed under the first set of issues in the FFN should not be used except as periodic and non-binding checks on the existing X-factor methods.

As noted, ICA is not suggesting that the Commission return to full rate base regulation of interstate LECs services. In seeking to have all financial and earnings information excluded from public policy consideration, the LECs try to indict for the supposed sins of the traditional inflexible form of rate base regulation, the very types of data and tools that are daily used by all firms and all capital markets.

Other Issues

Based upon the above discussion, ICA believes that the Commission should not adopt a formal TFP calculation for the X-factor and should continue to rely upon recent historical information in establishing the overall price constraint. If the Commission continues the refine the current price constraint, several of the other issues identified in the FFN can also be addressed using existing practices.

There is no evidence that creating a moving average calculation of the X-factor would improve the incentive features of the price cap plan or reduce the temptations for dominant incumbent LECs to try to game the system. Moving averages should not be adopted. Instead, the Commission should devote more of its scarce resources to promoting competition with the price cap LECs and use any resulting effective competition to reduce regulation of the incumbents in periodic reviews of the price cap plan.

Earnings and other financial information are everyday measurement tools in competitive markets, whereas productivity and X-factors are not. Therefore, ICA believes that the price cap plan should continue to use reported LEC earnings as a check on performance of the plan. LECs electing less than the highest X-factor established in this proceeding should have to share earnings over a threshold based upon the rate of return upon which price cap rates were initially set, adjusted for changes in the Treasury bond yield outside a defined zone of flexibility. Exogenous costs should be minimized to regulatory-determined factors that affect an LECs cash flow, including any annual earnings sharing adjustment.

Because the overall price constraint mechanism is the primary feature in the plan that potentially benefits consumers, the Commission should require that regulated carriers purchasing LEC access services demonstrate that they will flow through all price reductions attributable to the price constraint on a strictly pro rata dollar-for-dollar basis.

LECs should continue to have the flexibility to choose between at least two X-factors, because of the inevitable variations in different LECs' cost and demand changes. Such choices should be binding over a longer period than just one year. Three years is preferable to reflect a reasonable LEC planning horizon and biennial elections represent the minimum period.

Conclusion

The International Communications Association respectfully requests that the Commission (a) continue to recognize that the existing overall price constraint in the LEC plan, represented by the X-factor and the PCI calculation, is the primary, if not the only, consumer protection tool with respect to interstate rates; (b) not adopt modifications to the LEC price cap plan that would require specialized, non-public information but rather continue to rely on backstop mechanisms that use the type of financial and earnings information widely used in competitive markets today; and (c) make no radical modifications in the structure of the existing price constraint that would increase the complexity of the price cap plan or increase the dominant incumbent LECs' ability to game the system.

Respectfully Submitted,
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CERTIFICATE OF SERVICE

I, Patricia S. Nolan, hereby certify that on January 16, 1996 copies of the of the foregoing Comments of the International Communications Association were either hand delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the parties on the attached service list.

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